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SENATE BILL NO. 536

Senate Amendments in [] — January 29, 2004

A BILL to [~~amend and reenact § 8.9A-318 of the Code of Virginia and to~~] amend the Code of Virginia by adding in Title 6.1 a chapter numbered 19, consisting of sections numbered 6.1-472 and 6.1-473, relating to Asset-Backed Securities Facilitation Act.

Patrons Prior to Engrossment—Senator Stosch; Delegates: Dudley, Janis and Shannon

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That [~~§ 8.9A-318 of the Code of Virginia is amended and reenacted and~~] the Code of Virginia is amended by adding in Title 6.1 a chapter numbered 19, consisting of sections numbered 6.1-472 and 6.1-473, as follows:

CHAPTER 19.

ASSET-BACKED SECURITIES FACILITATION ACT.

§ 6.1-472. Title.

This chapter shall be known as the Asset-Backed Securities Facilitation Act.

§ 6.1-473. Securitization transactions; no interest retained by transferor.

A. Notwithstanding any other provision of law, including, but not limited to, § 8.9A-623, to the extent set forth in the transaction documents relating to a securitization transaction:

1. Any property, assets, or rights purported to be transferred, in whole or in part, in the securitization transaction shall be deemed to no longer be the property, assets, or rights of the transferor;

2. A transferor in the securitization transaction, its creditors or, in any insolvency proceeding with respect to the transferor or the transferor's property, a bankruptcy trustee, receiver, debtor, debtor in possession, or similar person, to the extent the issue is governed by the laws of the Commonwealth, shall have no rights, legal or equitable, whatsoever to reacquire, reclaim, recover, repudiate, disaffirm, redeem, or recharacterize as property of the transferor any property, assets, or rights purported to be transferred, in whole or in part, by the transferor; and

3. In the event of a bankruptcy, receivership, or other insolvency proceeding with respect to the transferor or the transferor's property, to the extent the issue is governed by the laws of the Commonwealth, such property, assets, and rights shall not be deemed to be part of the transferor's property, assets, rights, or estate.

B. Nothing contained in this chapter shall be deemed to require any securitization transaction to be treated as a sale for federal or state tax purposes or to preclude the treatment of any securitization transaction as debt for federal or state tax purposes or to change any applicable laws relating to the perfection and priority of security or ownership interests of persons other than the transferor, hypothetical lien creditor or, in the event of a bankruptcy, receivership or other insolvency proceeding with respect to the transferor or its property, a bankruptcy trustee, receiver, debtor, debtor in possession, or similar person. Nothing in this chapter shall change the tax treatment of securitizations that take place pursuant to this chapter.

[C. "Securitization transaction" means a transaction relating to the issuance or transfer by a special purpose entity of beneficial interests or undivided interests, which entitle their holders to receive payments or other distributions that depend primarily on the cash flow from assets, including financial assets and other credit exposures, in which that special purpose entity has rights or the power to transfer rights.]

ENGROSSED

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